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In re Patent No. 7,402,386 :
Kurn et al. : DECISION ON REQUEST FOR
Issue Date: July 22, 2008 : RECONSIDERATION OF
Application No. 10/824,829 : PATENT TERM ADJUSTMENT AND
Filed: April 14, 2004 : NOTICE OF INTENT TO ISSUE
Atty Docket No. 25115-711.201 : CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM UNDER AND APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705" filed August 15, 2008. Patentee requests that the patent term adjustment for the above-identified patent be set at 141 days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **140 days**.

On July 22, 2008, the above-identified application matured into U.S. Patent No. 7,402,386. The instant request for reconsideration was timely filed on August 15, 2008. The patent issued with a revised Patent Term Adjustment of 41 days.

Patentee asserts that the period of reduction under 37 CFR 1.704(c)(10) for filing an amendment under § 1.312 on April 2, 2008, should be 12 days instead of 112 days.

Pursuant to 37 CFR 1.704:

(c) Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(10) Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or

(ii) Four months

The period under 37 CFR 1.704(c)(10) is counted beginning on the date the amendment under § 1.312 was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312. "When a period is indicated (in 37 CFR 1.703 or 1.704) as 'beginning' on a particular day, that day is included in the period, in that such day is 'day one' of the period and not 'day zero.'" MPEP 2731. "For example, a period beginning on April 1 and ending on April 10 is ten (and not nine) days in length." Id.

In this instance, the period of reduction under 37 CFR 1.704(c)(10) of 112 days for filing the amendment under § 1.312 on April 2, 2008, is incorrect. The record reveals that the Office took action in response to the filing of amendment under § 1.312 on April 14, 2008. Accordingly, the period of adjustment of the term of the patent should have been reduced by 13 days (not 112 days), the lesser period beginning on the date the amendment under § 1.312 was filed, April 2, 2008, and ending on the mailing date of the Office action or notice in

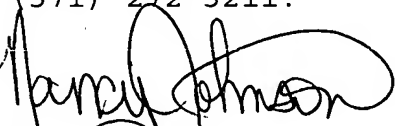
response to the amendment under § 1.312, April 14, 2008. The period of reduction of 112 days will be removed and a period of reduction of 13 days will be entered.

In view thereof, the patent term adjustment indicated in the patent should be **140 days**.

The \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **140 days**.

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,402,386 B2

DATED : Jul. 22, 2008

INVENTOR(S) : Kurn et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (41) days

Delete the phrase "by 41 days" and insert – by 140 days--